

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ANTHONY FEHR and ACL Fehr
LLC**

Facility #65290
Section 18, Whittemore Township
Kossuth County, Iowa

ADMINISTRATIVE ORDER
NO. 2011-AFO- **25**

TO: Anthony Fehr
102 - 190th Street
Whittemore, Iowa 50598

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should directed to:

Relating to Technical Requirements:

Jeremy Klatt, DNR Field Office 2
Iowa Department of Natural Resources
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to Legal Requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of Penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Appeal, if any, to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Anthony Fehr owns and operates a 1,140 animal unit confinement facility known as ACL Fehr LLC. ACL Fehr LLC is listed as the deed holder of the property; however the company was administratively dissolved in August 2010. The facility is located at 103 - 190th Street, Whittemore, Iowa (Section 18, Whittemore Township, Kossuth County, Iowa). Mr. Fehr filed the original MMP with an Iowa Phosphorus Index on May 2, 2007. The annual MMP update deadline was established as June 1 of each calendar year. The next update to the Iowa Phosphorus Index was due June 1, 2011.

2. The MMP update with an Iowa Phosphorus Index was due June 1, 2011. The MMP update and Iowa Phosphorus Index was not submitted for the Fehr facility. On June 13, 2011, DNR issued a Notice of Violation letter to Mr. Fehr for failing to the MMP update and Iowa Phosphorus Index. The letter stated that the required information must be submitted by July 1, 2011 in order to avoid further enforcement. On July 14, 2011, DNR issued a Notice of Referral to Larry and Anthony Fehr. The Notice of Referral indicated that a complete MMP update with an Iowa Phosphorus Index had not been received and the matter would be referred for further enforcement. On July 27, 2011, a short form MMP and compliance fees were submitted to DNR. The Iowa Phosphorus Index was not submitted. On September 2, 2011, DNR sent a letter to Mr. Fehr informing him that the Iowa Phosphorus Index was not submitted. To date, the Iowa Phosphorus Index has not been submitted. In October 2011, Larry Fehr, Anthony Fehr's grandfather, contacted DNR and stated that the soil samples for the Iowa Phosphorus Index would be collected after harvest was completed and then the Iowa Phosphorus Index would be submitted.

3. Mr. Fehr has a history of noncompliance with the MMP submittal requirements. On June 12, 2008, DNR Field Office 2 sent Mr. Fehr a letter informing him the facility's MMP update submittal was incomplete. On October 24, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Fehr for a storm water permit violation. On May 20, 2009, DNR Field Office 2 sent Mr. Fehr a letter informing him the facility's MMP update submittal was incomplete. On June 14, 2010, DNR Field Office 2 issued a Notice of Violation letter to Mr. Fehr for failing to submit the MMP update. The MMP update for 2010 was later submitted by Mr. Fehr.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.312(3) and 567 IAC 65.16(3)"b" require an owner of a confinement feeding operation who is required to submit a MMP to submit a complete updated MMP on an annual basis to the DNR. 567 IAC 65.17(17)"d" states that the phosphorus index is valid if the soil phosphorus concentration data is less than four years old. Mr. Fehr submitted an Iowa

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Phosphorus Index in 2007; therefore in order for the 2011 MMP update to be considered complete it should have included an Iowa Phosphorus Index. The 2011 MMP update was due April 1, 2011. A complete MMP update with an Iowa Phosphorus Index has not been submitted to date. The above-mentioned facts indicate violations of this provision.

2. 567 IAC 65.16(3)"c" also states that an annual compliance fee of \$0.15 per animal unit at the animal feeding operation shall accompany the annual MMP update submitted to the DNR for approval. The compliance fee for the Fehr facility is \$171.00. The compliance fee was due June 1, 2011 and was not submitted until July 27, 2011. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Anthony Fehr and ACL Fehr LLC to do the following:

1. Submit a complete MMP update with an Iowa Phosphorus Index by November 15, 2011; and
2. Pay an administrative penalty in the amount of \$3,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of this administrative consent order with an administrative penalty of \$3,000.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Fehr's failure to timely submit a complete MMP update with an Iowa Phosphorus Index allowed him to save time and money. An economic benefit has been gained from the delay in the submittal. \$250.00 is assessed for this factor.

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Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The MMP update and Iowa Phosphorus Index are crucial aspects of the DNR's animal feeding operation program. The MMP update and Iowa Phosphorus Index ensure that an animal feeding operation has adequate production land available so that the manure can be properly applied to cropland at an agronomic rate in order to prevent over application of manure. The Fehr facility has a capacity of 1,140 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$1,500.00 is assessed for this factor.

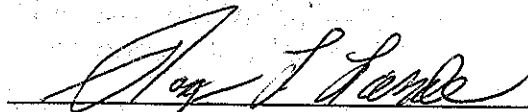
Culpability – Mr. Fehr has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. To date, Mr. Fehr has not submitted an Iowa Phosphorus Index. Mr. Fehr has received previous Notice of Violation letters for similar violations. Therefore, \$1,250.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC Chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 16th day of
October, 2011.

Facility #65290; Kelli Book, DNR Field Office 2, EPA, Gene Tinker, VIII.C.2